

Stacey C. Stone, Esq.
HOLMES WEDDLE and BARCOTT, P.C.
701 W. Eighth Avenue, Suite 700
Anchorage, Alaska 99501-3408
Phone: (907) 274-0666
Email: sstone@hwb-law.com

Attorneys for Use-Plaintiff and Plaintiff L&M Equipment, Inc.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA, AT ANCHORAGE

UNITED STATES OF AMERICA for the
use and benefit of L & M EQUIPMENT,
INC. and L & M EQUIPMENT, INC.,

Use-Plaintiff
and Plaintiff,

vs.

SOUTHWEST ALASKA
CONTRACTORS, LLC and BERKLEY
INSURANCE COMPANY and its
Payment Bond No. 0182829,

Defendants.

Case No. 3:15-cv-_____

COMPLAINT
(Breach of Contract and
Payment Bond)

Plaintiff United States of America for the use and benefit of L & M Equipment, Inc. (hereinafter "Use-Plaintiff LMI") and L & M Equipment, Inc. (hereinafter "LMI"), by and through its attorneys, Holmes Weddle and Barcott, P.C., hereby sets forth its complaint against defendants Southwest Alaska Contractors, LLC and Berkley Insurance Company and its Payment Bond No. 0182829 by stating and alleging as follows:

1. LMI is an Alaska corporation which is in all ways qualified to assert this complaint, having paid its last annual taxes and filed its last biennial report required to maintain its good standing under the Alaska Corporations Code. At all pertinent times reflected herein, LMI was duly licensed in the State of Alaska, and is currently a registered and licensed contractor at this time, with its principal place of business located in Naknek, Alaska.

2. Defendant Southwest Alaska Contractors, LLC ("SAC") is an Alaska limited liability company, with a mailing address in Anchorage, Alaska. SAC's sole member's physical address, as registered with the Division of Corporations, is located in Anchorage, Alaska.

3. Upon information and belief defendant Berkley Insurance Company (hereinafter "Berkley") is an insurance/indemnity/surety company authorized to and which does provide contractor license bonds and payment/performance bonds in Alaska.

4. This court has jurisdiction of this action pursuant to 40 U.S.C. § 3133, known as the Miller Act, and/or 28 U.S.C. § 1352 dealing with bonds executed under federal law. This suit is brought in the name of the United States of America for the use and benefit of LMI and has been commenced within one year of the date on which the last of the equipment was furnished by LMI for use in the performance of the construction contract referenced herein.

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5. During 2014, Paug-Vik Services, LLC ("Paug-Vik") entered into a subcontract agreement with SAC for work on a certain construction project known as 2014 Remedial Action-Cleanup ("RAC"), King Salmon Airport, Contract FA8903-11-C-89001 (hereinafter "construction contract" or "project") which is located in or near King Salmon, Alaska. The owner of the project was the United States Air Force and Paug-Vik was the prime contractor.

6. Pursuant to the Miller Act, 40 U.S.C. § 3133, and/or 28 U.S.C. § 1352, SAC, as principal, and Berkley, as surety, executed Payment Bond and Performance Bond No. 0182829 for the protection of all persons supplying labor, materials and equipment furnished for use in the performance of the construction contract. The Payment Bond furnished by SAC reflected Paug-Vik as owner rather than the United States Air Force. Said Payment Bond has been in effect at all pertinent times, and remains in full force and effect.

7. At the request and direction of SAC, and pursuant to an agreement between SAC and LMI and/or extra work directed by SAC in regard thereto, LMI furnished certain equipment for use in the performance of the construction contract.

8. As of December 15, 2014, the amount that remains due and owing to LMI for the equipment it furnished for use in the performance of the construction contract is \$96,959.28, plus interest at 10.5% per annum.

9. Despite demand, SAC has failed and refused to pay LMI the amount of \$96,959.28, plus interest at 10.5% per annum, which remains due and owing to LMI for equipment furnished for use in the performance of the construction contract.

CLAIM FOR RELIEF BY PLAINTIFF LMI AGAINST DEFENDANT SAC

10. LMI realleges and incorporates by reference paragraphs 1 through 9 above, as though fully set forth herein.

11. LMI furnished equipment to SAC which was used by SAC in the performance of the above-referenced construction contract work. Said equipment was provided to SAC at the specific direction and request of SAC.

12. Despite demand, SAC has failed and refused to pay all amounts SAC owes to Plaintiff LMI for said equipment. SAC is indebted to LMI in the amount of \$96,959.28 on account of equipment furnished to SAC which was used in the performance of the work provided for in the construction contract.

13. In addition to the principal amount owed of \$96,959.28, SAC is also liable to LMI for interest at 10.5% per annum on said amount plus costs and attorney's fees to the fullest extent allowable by contract and/or applicable law.

**CLAIM FOR RELIEF BY USE-PLAINTIFF LMI
AGAINST DEFENDANT BERKLEY INSURANCE COMPANY**

14. Use-Plaintiff LMI realleges and incorporates by reference paragraphs 1 through 9 above, as though fully set forth herein.

15. Use-Plaintiff LMI is within the class of persons protected by Payment Bond No. 0182829 issued by Berkley.

16. By reason of SAC's failure to make payment for the equipment furnished by Use-Plaintiff LMI which was used by SAC in the performance of the work provided for in the construction contract, Berkley, in its capacity as surety and on the basis of the obligations set forth in Payment Bond No. 0182829, is liable to Use-Plaintiff LMI in the amount of at least \$96,959.28.

17. Use-Plaintiff LMI gave timely notice of its claim under the Payment Bond.

18. After receipt of Use-Plaintiff LMI's claim, Berkley failed to timely answer the claim by stating the amounts that were undisputed and the basis for challenging any amounts that were disputed as required by § 7.1 of the Payment Bond. Additionally, defendant Berkley failed to arrange for payment of the undisputed amounts as required by § 7.2 of the Payment Bond. Accordingly, defendant Berkley is required to indemnify Use-Plaintiff LMI for its reasonable attorney's fees and costs incurred to recover sums found to be due and owing to Use-Plaintiff LMI as required by § 7.3 of the Payment Bond.

19. In addition to the principal amount owed of \$96,959.28, defendant Berkley is also liable to Use-Plaintiff LMI for interest on said amount at 10.5% per annum by contract and/or applicable law.

WHEREFORE, Use-Plaintiff and Plaintiff L & M Equipment, Inc. prays for relief against defendant Southwest Alaska Contractors, LLC and against defendant Berkley Insurance Company and its Payment Bond No. 0182829 as follows:

1. For judgment against Southwest Alaska Contractors, LLC in favor of Plaintiff LMI in the amount of \$96,959.28, plus interest, attorney's fees, and costs.
2. For judgment against Berkley Insurance Company and its Payment Bond No. 0182829 in favor of Use-Plaintiff LMI in the amount of \$96,959.28, plus attorney's fees and costs (as provided by § 7.3 of the Payment Bond), and interest.
3. For such other and further relief as the Court deems just and equitable in the premises.

DATED this 28th day of October, 2015, at Anchorage, Alaska.

HOLMES WEDDLE and BARCOTT, P.C.
Attorneys for Use-Plaintiff and Plaintiff
L & M Equipment, Inc.

By: /s/ Stacey C. Stone
Stacey C. Stone
Alaska Bar No. 1005030

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